

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, SW
WASHINGTON, DC 20554

MEDIA BUREAU
AUDIO DIVISION
TECHNICAL PROCESSING GROUP
APPLICATION STATUS: (202) 418-2730
HOME PAGE: www.fcc.gov/mb/audio/

AUG - 4 2008

ENGINEER: GARY A. LOEHRS
TELEPHONE: (202) 418-2700
FACSIMILE: (202) 418-1410/1411
MAIL STOP: 1800B3
INTERNET ADDRESS: Gary.Loehrs@fcc.gov

Jay Dietz
Ohana Broadcasters Corporation
2234 Aha Niu Place
Honolulu, HI 96821

Re: Ohana Broadcasters Corporation
KXRG-LP, Honolulu, HI
Facility ID No. 132054
File No. BMPL-20060320AAQ
Petition for Reconsideration

Dear Mr. Dietz:

The staff has under consideration a pleading filed April 28, 2006, on behalf of KXRG-LP requesting reconsideration of the staff's March 29, 2006 dismissal of the above captioned application for a minor modification to a construction permit.

An engineering study of the application reveals that the proposed facility would fail to meet the minimum spacing requirements of Section 73.807 of the Commissions' Rules¹ in relation to license BLH-20070706ACG, KORL-FM, Waianae, HI. KXRG recognizes this violation and requests waiver of the minimum spacing requirements of Section 73.807. The waiver request was filed prior to the construction of KORL's (then KLHI-FM's) construction permit BPH-20060124AMJ. The waiver was requested so that KXRG could relocate its facility and operate at the new location until KORL began transmission from its proposed site. In support of the waiver request, KXRG states that since it had been previously operating from its as-built facility, it should be allowed to make a minor move, re-start operations, and then cease broadcasting when KORL begins operating from its new facility. Since KORL is now licensed, the request is no longer valid. For this reason and as stated below, we will deny the waiver request.

KXRG has been silent since April 4, 2006 when the license application BLL-20060322AAC was dismissed for building at the wrong location.

Allowing applicants to build and transmit at locations that has not been previously authorized

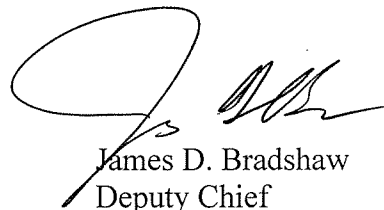
¹ 47 C.F.R. § 73.807.

and that cannot be ultimately licensed effectively nullifies the protection mandated by Section 73.807 to authorized protected service areas. The fact that KXRG has agreed to cease transmissions when KLHI (now KORL) begins authorized transmissions does not warrant waiver of the rule. Section 307(b) of the Communications Act of 1934, as amended ("the Act"),² mandates that the "Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution to each of the same." Implicit in this statement is the fact that it remains the function of the Commission, not applicants or licensees, to establish definitions of protected service and to ensure that existing and authorized proposed protected service is not degraded by interference. The Commission has stated that the public interest is not served by allowing applicants and licensees to negotiate among themselves which areas may receive interference. See *Open Media Corp.*, 8 FCC Rcd 4070 (1993). Therefore, since we cannot find that the public interest is served by this proposal, the promise to cease transmissions is of limited utility and is now moot.

When an applicant seeks waiver of the rules, it must plead with particularity the facts and circumstances which warrant such action. *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (quoting *Rio Grand Family Radio Fellowship, INC. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968) (per curiam)). We have afforded your waiver request the "hard look" called for under the *WAIT* Doctrine, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances set forth in the justification are insufficient to establish that granting waiver of Section 73.807 would be in the public interest.

Thus the Petition for Reconsideration IS HEREBY DENIED and application BMPL-20060320AAQ REMAINS DISMISSED. These actions are taken pursuant to Section 0.283 of the Commissions Rules.³

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Bradshaw', is written over the typed name.

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

² 47 U.S.C. § 307(b).

³ 47 C.F.R. § 0.283.